

DEPARTMENT OF COMMERCE

EMERGENCY RULE RELATING TO AMUSEMENT RIDES

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. An amusement ride fatality occurred in Wisconsin on July 14, 2007.

2. The department is in the processing of promulgating rule revisions under its Amusement Ride Code, chapter Comm 34 to address two issues that have come to light as a result of the accident investigation. The completion of this rule-making process and their enactment cannot occur prior to the beginning of the 2008 amusement ride season. The issuance of the emergency rules at this time is also necessary to allow amusement ride owners and operators sufficient time to acquire the necessary issuance.

3. The department believes that establishing liability insurance obligations for amusement ride owners and operators will promote safety.

Pursuant to section 227.24 (1) (c), Stats., this rule is adopted as an emergency rule to take effect on January 1, 2008.

Dated at Madison this _____
day of _____, 2007,
by the Department of Commerce.

Mary P. Burke, Secretary

The Wisconsin Department of Commerce adopts an order to renumber s. Comm 34.04 (2) (intro.), and to create Comm 34.035, and Comm 34.04 (2) (b), relating to amusement rides and affecting small businesses.

Analysis of Rule

1. Statutes Interpreted

Statutes Interpreted: s. 101.17, Stats.

2. Statutory Authority

Statutory Authority: ss. 101.02 (1) and 101.17, Stats.

3. Related Statute or Rule

Statutes: ss. 101.19 and 101.12 (1), Stats.,

Administrative Rules: Chapter Comm 34, Amusement Rides

4. Explanation of Agency Authority

Under the authority of s. 101.17, Stats., the Department of Commerce has oversight of various mechanical devices and equipment, which includes amusement rides, in order to protect public safety. The Department fulfills this responsibility by promulgating the Amusement Ride Code, under chapter Comm 34.

5. Summary of Proposed Rules

The emergency rules will require an amusement ride owner to acquire and maintain liability insurance in order to operate rides in Wisconsin beginning in 2008.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations

The US Consumer Product Safety Commission under the Consumer Product Safety Act has jurisdiction over portable amusement rides. The commission has not developed any specific standard or insurance requirements for amusement rides. At times the commission has issued various safety bulletins regarding operation, repair, maintenance or set-up for specific rides.

There are no existing or proposed federal regulations that address the specific issue of this rule.

7. Comparison with Rules in Adjacent States

A review of the amusement ride insurance regulations for the states of Illinois, Iowa, Michigan and Minnesota indicated the following liability insurance minimums:

- Illinois, \$100,000 for injury to one person, \$1,000,000 in aggregate, \$500,000 in aggregate for permanent sites with not more than 5 rides and operating at a height not more than 8 feet.
- Iowa, \$100,000 for injury to one person, \$300,000 in aggregate.

- Michigan, \$300,000 in aggregate, \$50,000 in aggregate if owner has only one ride designed primarily for children.
- Minnesota, \$1,000,000 in aggregate.

8. Summary of Factual Data and Analytical Methodologies

The proposed rules were developed utilizing information gathered during the department's investigation of a recent accident that resulted in a fatality. The department also evaluated the current provisions of the Amusement Ride Code, chapter Comm 34, with respect to industry safety practices that were identified during the department's periodic inspection of rides. The department also reviewed the amusement ride insurance regulations of various states.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

Currently, approximately 320 amusement ride owners and operators have registered rides with department for 2007. All owners and operators would be required to obtain liability insurance under the proposed rules. The cost of the amusement ride insurance is dependent upon several variables including the size of the operation and the type of rides. An insurance source indicated that the cost for a million dollar policy could range between \$30,000 and \$100,000 annually. However, it is unknown how many of these owners and operators already are covered by insurance either voluntarily or to satisfy contractual obligations or other state regulations.

An economic impact report has not been required to be prepared.

SECTION 1. Comm 34.035 is created to read:

Comm 34.035 Insurance. (1) Except as provided in sub. (2), no amusement ride owner may operate a ride unless at the time there is in existence a contract of insurance providing coverage of not less than \$1,000,000 per occurrence against liability for injury to persons for the ride.

(2) No amusement ride owner shall operate a non-mechanical ride or a coin-operated ride unless at the time there is in existence a contract of insurance for the ride providing coverage of not less than \$500,000 per occurrence against liability for injury to persons.

(3) (a) The insurance contract to be provided under subs. (1) and (2) shall be by an insurer or surety authorized to transact business in the state.

(b) The amusement ride owner shall be responsible for assuring that the insuring company will notify the department at least 10 days prior to cancellation or change of insurance coverage. The certificate of insurance shall acknowledge this notification responsibility.

(c) The insurance contract or an attached schedule to satisfy the provisions of subs. (1) and (2) shall identify each amusement ride included in the coverage utilizing the ride serial number where such a number exists.

SECTION 2. Comm 34.04 (2) (intro.) is renumbered 34.04 (2) (a).

SECTION 3. Comm 34.04 (2) (b) is created to read:

Comm 34.04 (2) (b) A request for amusement ride registration shall include proof of insurance under s. Comm 34.035.

SECTION 4. Comm 34.43 (2) is created to read:

Comm 34.43 (2) Before any amusement ride is operated, the owner of the amusement ride shall provide a copy of the insurance contract required under s. Comm 34.035 to the person, group or business contracting or leasing the installation and use of the amusement ride.

(END)

EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule on January 1, 2008.
